

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RONALD R. SANTOS, *et al.*,

Plaintiff,

v.

BENSON, *et al.*,

Defendants.

Case No. 3:23-cv-00281-MMD-CSD

ORDER

I. SUMMARY

Pro se Plaintiff Ronald Santos, who is incarcerated in the custody of the Nevada Department of Corrections, sued prison officials and medical personnel under 42 U.S.C. § 1983, alleging that they violated his Constitutional rights because they were deliberately indifferent to his serious medical needs, retaliated against him, and intentionally took his property. (ECF Nos. 6 (screening order specifying which claims are proceeding), 7 (Complaint).) Before the Court is the report and recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney (ECF No. 112) recommending that the Court grant in part, and deny in part, Plaintiff’s motion for leave to file an amended complaint (ECF No. 96). Plaintiff objected to the R&R (ECF No. 113), and Defendants filed responses to Plaintiff’s objection (ECF Nos. 117, 118). The Court does not find the arguments Plaintiff presents in his objection persuasive and indeed agrees with Judge Denney’s decision to dismiss certain proposed defendants from certain proposed claims while letting all of Plaintiff’s proposed claims proceed. As further explained below, the Court thus overrules the Objection and adopts the R&R in full.

II. DISCUSSION

Judge Denney mostly recommends that the Court grant Plaintiff’s motion to amend, as he recommends that Plaintiff be permitted to proceed with all his proposed

claims. (ECF No. 112 at 17-18.) However, Judge Denney recommends that some of Plaintiff's claims should not proceed against some of the potential defendants he named because he either does not include any allegations against them in the pertinent section of his proposed First Amended Complaint ("FAC"), or the allegations Plaintiff includes are insufficient to state a claim against them. (*Id.*; see also generally *id.*) Plaintiff specifically objects to Judge Denney's recommendation to dismiss his claims against "John Halki in Claims 1 and 3, Martin Naughton in Claims 1 and 5, Jessica Rambur and John Henley, in Claim 3." (ECF No. 113 at 5.)

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's R&R, the Court is required to "make a de novo determination of those portions of the R&R to which objection is made." *Id.* The Court will thus review Judge Denney's recommendation to dismiss Defendants Halki, Naughton, Rambur, and Henley from certain proposed claims de novo because Plaintiff objects. (ECF No. 113 at 5.)

A. Dr. Halki

As noted, Plaintiff objects to Judge Denney's recommendation to dismiss Dr. Halki from Plaintiff's proposed claims 1 and 3.¹ (*Id.*) Dr. Halki counters that Judge Denney made the correct decision because Plaintiff has not sufficiently alleged Dr. Halki's personal participation in the conduct giving rise to these two claims. (ECF No. 117 at 4-6.) The Court agrees with Dr. Halki.

As to claim 1, the Court specifically agrees with Dr. Halki that it is about delay in receiving an epidural injection and not about Plaintiff's decision to forgo surgery and instead receive a series of epidural injections. (ECF Nos. 117 at 4 (making this argument), 96-1 at 6-12 (focusing on delays in getting an epidural injection that Dr. Halki ordered).) Plaintiff does not allege that Dr. Halki received any kites regarding the delays in Plaintiff

¹Judge Denney recommends claim 5 proceed against Dr. Halki. (ECF No. 112 at 18.)

1 getting his epidural injections, or otherwise allege that Dr. Halki contributed to those
2 delays. (ECF No. 96-1 at 6-12.) Indeed, the Court agrees with Judge Denney's read of
3 the proposed FAC and decision to dismiss Dr. Halki from proposed claim 1: "Plaintiff
4 alleges that Dr. Halki ordered the epidural injection back in July 2022, but there is no
5 allegation that Plaintiff subsequently brought it to Dr. Halki's attention that the epidural
6 injection was not scheduled for another year and a half." (ECF No. 112 at 9.)

7 As to claim 3, the Court agrees with Dr. Halki that Plaintiff does not allege Dr. Halki
8 personally participated in withholding medications from Plaintiff. (ECF Nos. 117 at 5
9 (making this argument), 96-1 at 13-18 (declining to allege that Dr. Halki ever withheld or
10 delayed medications from Plaintiff, instead only alleging that Dr. Halki may have been
11 drunk when they spoke once).) Judge Denney noted the allegation against Dr. Halki in
12 claim 3 (ECF No. 112 at 11) and correctly determined "there are no allegations in Claim
13 3 about Dr. Halki denying, delaying, or interfering with Plaintiff's medications" in
14 recommending Dr. Halki not be a named Defendant as to this claim (*id.* at 13).

15 In sum, the Court overrules Plaintiff's objections as to Dr. Halki.

16 **B. Naughton, Rambur, Henley**

17 Plaintiff also objects to Judge Denney's recommendation not to include Naughton
18 as a Defendant in the versions of claims 1 and 5 he recommends proceed, and Rambur
19 and Henley in claim 3. (ECF No. 113 at 5.) These potential defendants counter, consistent
20 with the R&R, that they did not personally participate in the alleged constitutional
21 violations underlying these claims. (ECF No. 118.) The Court agrees with them.

22 Indeed, Plaintiff included no specific allegations against Naughton in his proposed
23 claim 1. (ECF No. 96-1 at 6-12.) And as Judge Denney noted as to claim 5, it "includes
24 no allegations that Dr. Naughton was made aware that the referral was not completed or
25 that he did not see a specialist." (ECF No. 112 at 17.) Plaintiff's allegations in these two
26 claims are insufficient for the Court to plausibly infer that Dr. Naughton personally
27 participated in these alleged constitutional violations. Similarly, Plaintiff simply does not
28 mention Henley in his claim 3 allegations. (ECF No. 96-1 at 13-18; *see also* ECF No. 118

1 at 7 (noting this).) And the Court agrees with Judge Denney that Plaintiff does not include
2 any allegations in his proposed claim 3 as to Rambur, “about what information was in
3 those grievances or any allegations that would show Rambur was deliberately indifferent
4 to his serious medical needs.” (ECF No. 112 at 13.) Based on Plaintiff’s own allegations
5 in his proposed FAC, these proposed defendants did not personally participate in the
6 constitutional violations alleged in the pertinent claims.

7 In sum, the Court also overrules Plaintiff’s objections as to Naughton, Rambur, and
8 Henley. In general, the Court agrees with the analysis in the R&R and will accept and
9 adopt it in full.

10 **III. CONCLUSION**

11 It is therefore ordered that Plaintiff’s objection (ECF No. 113) to Judge Denney’s
12 Report and Recommendation (ECF No. 112) is overruled.

13 It is further ordered that Judge Denney’s Report and Recommendation (ECF No.
14 112) is accepted and adopted in full.

15 It is further ordered that Plaintiff’s motion for leave to amend (ECF No. 96) is
16 granted in part, and denied in part, as specified in the R&R.

17 The Clerk of Court is directed to file a copy of the proposed FAC (ECF No. 96-1)
18 on the docket. The FAC is now the operative complaint in this case.

19 It is further ordered that Plaintiff is now proceeding on the following claims, against
20 the following Defendants, in the FAC.

21 It is further ordered that Plaintiff’s claim 1 Eighth Amendment deliberate
22 indifference to serious medical needs claim is proceeding against Defendants Keast and
23 Dr. Benson. It is not proceeding against Dr. Halki, Rambur, or Henley.

24 It is further ordered that Plaintiff’s claim 3 Eighth Amendment deliberate
25 indifference to serious medical needs claim is proceeding against Villegas, Dr. Benson,
26 Dr. Minev, Penneau, and Fukagawa. It is not proceeding against Rambur, Mitchell, Dr.
27 Halki, Dr. Naughton, and Keast.

28 It is further ordered that Plaintiff’s claim 4A First Amendment retaliation claim is

1 proceeding against Keast.

2 It is further ordered that Plaintiff's claim 4B Fourteenth Amendment due process
3 intentional deprivation of property claim is proceeding against Mahon and Tafelmeyer.

4 It is further ordered that Plaintiff's claim 5 Eighth Amendment deliberate
5 indifference to serious medical needs claim is proceeding against Dr. Halki. It is not
6 proceeding against Dr. Naughton, Keast, Dr. Barrett, or Dr. Benson.

7 It is further ordered that any party who believes this order necessitates an
8 extension of any scheduling order deadlines may file an appropriate motion or stipulation.

9 DATED THIS 22nd Day of November 2024.

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12 MIRANDA M. DU
13 CHIEF UNITED STATES DISTRICT JUDGE
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